

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

(1)	EMMERT SECOND LIMITED)	
	PARTNERSHIP, a Nevada limited)	
	partnership;)	
(2)	I.A.M. OF PUERTO RICO, INC.,)	
	a Puerto Rico corporation;)	
(3)	DURA-STILT SALES LIMITED)	
	PARTNERSHIP, a Nevada limited)	
	partnership,)	
)	
	Plaintiffs,)	
)	
v.)	Case No. CIV-10-00015-C
)	
(1)	DIAMOND WALL, INC.,)	
)	
	Defendant.)	

ANSWER TO COUNTERCLAIM

Plaintiffs, Emmert Second Limited Partnership (“Emmert”), I.A.M. of Puerto Rico, Inc. (“IAM”), and Dura-Stilt Sales Limited Partnership (“Dura-Stilt Sales”) (collectively, “Plaintiffs”), for their Answer to the Counterclaim of Defendant, Diamond Wall, Inc. (“Diamond Wall” or “Defendant”), allege and state as follows:

1. Plaintiffs deny the allegations contained in paragraph 58 of the Counterclaim.

2. Plaintiffs deny the allegations contained in paragraph 59 of the Counterclaim.

3. Plaintiffs deny the allegations contained in paragraph 60 of the Counterclaim.

AFFIRMATIVE DEFENSES

For further answer to the Counterclaim and as affirmative defenses, Plaintiffs state as follows:

1. The Counterclaim fails to state a claim upon which relief may be granted.
2. The Counterclaim is barred by the following doctrines: estoppel (legal and equitable), laches, unclean hands, unjust enrichment, and/or waiver.
3. Diamond Wall's claims are barred by breach of duty, default or other failure or misconduct by Diamond Wall and/or by other persons beyond the control of Plaintiffs, and for which Plaintiffs are not responsible.
4. Diamond Wall is liable to Plaintiffs for copyright infringement, trade dress infringement, unfair competition and deceptive trade practices, under common law and the Lanham Act, as set forth in Plaintiffs' Complaint, which is incorporated herein by reference.

5. As discovery is continuing, Plaintiffs reserve the right the right to amend this Answer to assert additional defenses and/or claims, as appropriate.

WHEREFORE, having fully answered, Plaintiffs, Emmert Second Limited Partnership, I.A.M. of Puerto Rico, Inc., and Dura-Stilt Sales Limited Partnership, pray that Diamond Wall take nothing by way of the Counterclaim, and that Plaintiffs be awarded their costs and attorney fees, if appropriate, and such other and further relief as Plaintiffs may be entitled to in law or in equity.

Respectfully submitted,

s/ Mark K. Stonecipher

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CERTIFICATE OF SERVICE

☒ I hereby certify that on this 2nd day of August, 2010, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants:

- (1) Leslie L. Lynch - llynch@gablelaw.com
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☒ I hereby further certify that on this 2nd day of August, 2010, I served the foregoing document by United States Mail, postage prepaid, on the following:

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